IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 14TH AUGUST 2006 / 23RD SRAVANA 1928

CMA.No. 84 of 1997

AS.198/1993 of DISTRICT COURT, THALASSERY
OS.518/1990 of ADDL.MUNSIFF COURT, KANNUR

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APPELLANT:

CHIRAKKAL KOVILAKAM DEVASWAM,
KADALAYI SREE KRISHNA TEMPLE,
THROUGH ITS EXECUTIVE OFFICER,
CHIRAKKAL AMSOM DESOM,
KANNUR TALUK

BY ADV. SRI.T.A.RAMADASAN

RESPONDENTS:

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1. K. PUSHPAJA, W/O P.KUNHIRAMAN,
MARAR LANE, CHIRAKKAL AMSOM AND DESOM,
KANNUR TALUK.

2. P.KUNHIRAMAN, S/O RAMAN NAIR,
CHIRAKKAL AMSOM DESOM, KANNUR.

3. A. RAMAKRISHNAN, S/O APPU NAIR,
CLERK, WESTERN INDIA PLYWOODS,
RESIDING AT MARAR LANE,
CHIRAKKAL AMSOM DESOM, KANNUR

BY ADV.P.N. RAVINDRAN (FOR R3)
ADV. RAJESH R KORMATH (FOR R1, R2)
SRI.C.RAMAN
SMT.M.R.MINI
MOHAN C MENON (GP)

THIS CIVIL MISC. APPEAL HAVING BEEN FINALLY HEARD ON 14/08/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

C.M.A. 84/1997

DATED THIS THE 14TH DAY OF AUGUST, 2006

JUDGMENT

The plaintiff, Chirakkal Kovilakam Devaswam, Kadalayi Sree Krishna Temple, through its Executive Officer, in O.S.No.518/1990 on the file of the Additional Munsiff Court, Kannur, is the appellant. The plaintiff laid the original suit for a permanent prohibitory injunction, restraining the defendants or their men, from trespassing into the plaint B schedule Property and doing any acts of mischief, therein. The defendants filed the joint written statement as well as the additional written statement, denying the contentions raised by the plaintiff. They also contended that the first defendant had already constructed a house as per the permission and approved plan of Chirakkal Panchayat, and in accordance with all the building rules, Electric connection was obtained by drawing the electric line, through plaint B schedule property. The third defendant had completed the

basement for the construction of his house. There is already a pathway in existence, which is being used by the defendants 1 and 2, to reach their property from the road and therefore, prayed to dismiss the suit.

2. The Court raised five issues and the parties had adduced evidence. Accordingly, the plaintiff examined five witnesses and marked 28 documents. The defendants examined two witnesses and marked eleven documents. Exts. C1 to C4 and Exts. X1 to X6 were also brought into evidence. The learned Munsiff, after appreciating the evidence so adduced, decreed the suit, restraining the defendants or their men from trespassing into the plaint B schedule property and committing any waste therein. However, the Court did not allow the cost, as prayed for.

3. The defendants approached the Principal District Court, Thalassery, with A.S.No.198/1993, challenging the decree and judgment, passed by the trial Court. The plaintiff filed a memorandum of cross objection, challenging the decision of the trial Court, in

not awarding the cost of the suit. The learned District Judge, through his judgment dated 4.12.1996, disposed of the appeal and cross objection, as follows:-

> "The finding of the Court below that the respondent is having title over B schedule property is set aside and that issue is left open to be decided in an appropriate proceedings. The finding of the Court below that the respondent has proved their possession over the plaint B schedule property is confirmed. But the decree and judgment passed by the Court below is set aside and the suit is remanded to the trial Court for the limited purpose of reconsidering the right of way, claimed by the appellants over the plaint B schedule property. In case the appellants pay or deposit an amount of Rs.2,500/-, within one month from the date of appearance in the Court below, the Court below will grant an opportunity to the appellants to amend their pleadings and in case the amendment is allowed, the Court below also afford a brief and reasonable opportunity to both sides, to adduce fresh evidence."

4. The above order of remand is under challenge through this C.M.Appeal, by the plaintiff, Devaswom.

5. When the appeal came up before this Court, and after hearing the learned counsel at length, it was

suggested to have the same referred to the Adalath. Accordingly, the matter was considered for settlement, at the Pre-Adalath, on 17.11.2005. The mediators had sent a report, stating that the matter could not be settled.

6. Nevertheless, I had directed the parties to appear before me and the matter was negotiated. After a number of sittings in the presence of the parties and their respective counsel, together with the Commissioner, H.R & C.E, Kozhikode, Mr.Narayanankutty and the Executive Officer, Chirakkal Kovilakam Devaswam, Mr.Prabhakaran, a consensus had been brought about. Accordingly, it was resolved to give a pathway on the western side of the plaint B schedule property, so that the respondents 1 and 2 shall have access to their house and also they will be able to ply a Maruthy car, which they own. Though initially there was lack of consensus regarding the width of the pathway, I had directed the parties and their counsel to go to the spot and to measure out the area actually required for the plying of a Maruthy car, taking into

account that there is a well situated on the corner of the property of defendants 1 and 2. Mr. Mohan C. Menon, the counsel appearing for the commissioner, H.R. & C.E, Kozhikode, Mr. P.N. Ravindran, the counsel for the respondents 1 and 2, Mr,T.A.Ramadasan, advocate appearing for the appellant, along with M/s.Narayanankutty and Prabhakaran, have carved out a pathway in full and final settlement of the matter between the parties. Accordingly, it was resolved to give a pathway along the western side of the plaint B schedule property, so that they will have access from the adjacent road to the property of the defendants 1 and 2 and also could use a Maruthy car.

7. As directed by this Court, with the help of the local Village Officer, the parties went to the plaint B schedule property as well as the property of the defendants 1and 2. They had measured out an area extending to 0.250 cents with the actual measurement on all sides, touching from the Railway Station-Ambalam road, through the plaint B schedule property, to the

property of the defendants 1 and 2. A plan, as per the links measurements as well as in feet measurements, were furnished. The pathway to be used by the defendants 1 and 2 are marked with blue colour and the properties belonging to the plaintiffs are marked in pink colour.

8. Meanwhile I.A.No.2040/2006 was filed by the 'ValiaRaja' of Chirakkal Kovilakam and the hereditary trustee of Chirakkal Kovilakam Devaswom that he may be impleaded in the appeal. As per the order dated 7.8.2006, I have dismissed his impleading application.

9. I have heard all concerned in this appeal. As plaintiff and defendants 1 and 2 had fully and finally settled the matter, resolving the disputes between the parties, the former giving a pathway as discussed above, extending to ¼ cents in accordance with the plan appended herewith, for the ingress and egress of defendants 1 and 2, as well as for all those who are related, connected or permitted by them to their house, I dispose of this appeal as follows:-

(i). The judgment dated 4.12.1996 of the Principal District Court, Thalassery, in A.S.No.198/1993 and the memorandum of cross objection therein are set aside.

(ii). The decree and judgment dated 16.4.1993 in O.S.No. 518/1990, are modified to the effect that the plaintiff shall assign ¼ cents of property, as per the plan appended herewith, in favour of defendants 1 and 2. The defendants 1 and 2 shall pay value of the said land, so fixed by the commissioner of H.R & C.E, Kozhikode, who shall take appropriate steps, as per the Hindu Religious and Charitable Endowments Act, to assign the said ¼ cent of property for the use of the defendants 1 and 2, and all others connected or related with them, on receiving the value of the said land.

(iii). The proceedings now initiated by the commissioner H.R & C.E, Kozhikode, under Section 29 of the Hindu Religious and Charitable Endowments Act, shall be continued and the same shall be completed as per this judgment, completing the formalities, as early as possible, so that a final decision, to assign the ¼

cent to defendants 1 and 2, shall be taken without much delay.

(iv). The plan submitted, showing the lie of the property, including the pathway to be assigned and used by the defendants 1 and 2, as directed above, containing the link measurements as well as in feet measurements, shall become part of this judgment and decree of this C.M.Appeal.

(v). In the circumstances of this case, I direct the parties to bear the respective costs of the proceedings, except paying the value of the property extending to ¼ cent, to the H.R & C.E Department.

J.M.JAMES
JUDGE

mrcs